

Arent, Fox, Kintner, Plotkin & Kahn

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August 22, 1979

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

9-204A123
AUG 22 1979
10758
RECORDATION NO. 10758 Filed 1423
AUG 22 1979 - 3 45 PM
INTERSTATE COMMERCE COMMISSION

Dear Madam:

Enclosed are the original and two executed counterparts of a Conditional Sale Agreement, dated as of August 7, 1979 relating to certain railroad rolling stock as listed below, made between the following parties:

<u>Document</u>	<u>Party</u>	<u>Name and Address</u>
Conditional Sale Agreement	Manufacturer and Vendor:	FMC Corporation Marine and Rail Equipment Division 4700 N.W. Front Avenue P.O. Box 3616 Portland, Oregon 97208
	Vendee:	Hillman Coal & Coke Company Grant Building Pittsburgh, PA 15219

Equipment covered by the above-mentioned document:

Fifty (50) Steel Fifty Foot, Seventy Ton Boxcars, Height, Plate C, with AAR Mechanical Designation XM. (MCSA 6075-6124)

I respectfully request that the original of these documents be recorded under the provisions of 49 U.S.C. §11303.

I would also appreciate your stamping the additional copies of the above documents and returning them to me at the above address.

AUG 22 1979


10758

Sgt. R. White
C. Deane

Secretary
Interstate Commerce Commission
August 22, 1979
Page 2

The undersigned certifies that he is acting as counsel for Hillman Coal & Coke Company and that he has knowledge of the matters set forth in the above-described documents.

Sincerely yours,

A handwritten signature in cursive script, reading "John D. Hushon". The signature is written in dark ink and is positioned above the printed name.

John D. Hushon

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/22/79

OFFICE OF THE SECRETARY

John D. Hudson
Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building
1815 H. Street, N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/22/79 at 3:45pm, and assigned recordation number(s). 10758

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

AUG 22 1979 -3 45 PM

INTERSTATE COMMERCE COMMISSION

This CONDITIONAL SALE AGREEMENT ("Agreement"), dated as of August 7, 1979 by and between FMC Corporation, a Delaware corporation ("Manufacturer") and Hillman Coal & Coke Company, a Delaware corporation, ("Vendee").

W I T N E S S E T H

WHEREAS, Manufacturer has offered to sell to Vendee pursuant to a July 6, 1979 Quotation to Vendee ("Proposal"), and Vendee wishes to buy and pay for the Railroad Equipment (car numbers MCSA 6075-6124, inclusive, hereinafter individually called a "Car" and collectively called the "Cars") described in the Proposal; and

WHEREAS, Vendee does not wish to pay for the Cars prior to their shipment and has asked Manufacturer to give Vendee title and possession to the Cars on completion, and Manufacturer is willing to do so upon the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the promises of the parties, the parties agree as follows:

1. Manufacturer agrees to sell and Vendee agrees to buy the Cars as provided in the Proposal and this Agreement.
2. Manufacturer agrees to deliver the Cars to Vendee and Vendee agrees to accept the Cars from Manufacturer at Manufacturer's plant.

When the purchase price of a Car has been paid, this Agreement shall automatically be terminated as to such Car and Manufacturer's purchase money security interest shall automatically terminate without further action by or notice to any party concerned as to such Car. On delivery of each Car to Vendee, Vendee will assume the responsibility and risk of loss with respect to such Car.

3. After Vendee's representative finds that each Car has been built in accordance with the requirements of the Proposal, he will execute and deliver to Manufacturer a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to each Car shall pass to Vendee upon the receipt by Manufacturer of each such certificate of acceptance; provided, however, that Manufacturer retains a purchase money security interest in each Car until it has received payment in full for it. Upon receipt of payment, Manufacturer shall execute and deliver to Vendee a bill of sale confirming the earlier transfer of title for the Cars, free from all liens and encumbrances created by Manufacturer. Neither the inspection nor any examination nor the acceptance of any Car shall be deemed a waiver or a modification by Vendee of any of its rights against the Manufacturer under any warranties contained in the Proposal.

4. Vendee, without expense to Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation. In addition, Vendee shall do such other acts as may be required by law, or reasonably requested by Manufacturer, for the protection of the Manufacturer's security interest in the Cars.

5. Vendee agrees that it will not permit any liens of any kind to attach to the Cars (other than any rights of its lessee under Vendee's lease with such lessee) and that it will

(a) indemnify and save harmless Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind and

(b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars

because of the ownership, use, marking, operation, management or handling of the Cars by Vendee or its lessee during the term of this Agreement. Vendee's obligations contained in this paragraph shall survive the termination of this Agreement, by mutual agreement or otherwise.

6. Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

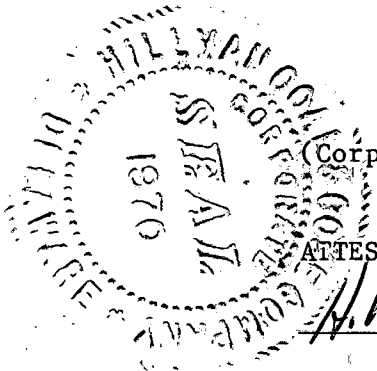
7. Prior to the delivery of each Car to Vendee, it will be numbered from the car number series MCSA 6075-6124, inclusive.

8. Vendee agrees with Manufacturer that the execution by Manufacturer of this Agreement or the delivery by Manufacturer to Vendee of the Cars shall not relieve Vendee of its obligations to accept, take and pay for the Cars in accordance with the terms of the Proposal, nor

impair any of the Manufacturer's rights under the Proposal, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

9. Manufacturer shall be entitled to all the rights of a secured party under the Uniform Commercial Code of Oregon and of the Interstate Commerce Act as in effect at any time during which it retains a security interest in the Cars.

10. Upon payment for any Car, Manufacturer will take such action as may be reasonably requested by Vendee to confirm the release of the security interest in such Car.



(Corporate Seal)

ATTEST:

H. Vaughan Blaylock

(Corporate Seal)

A. R. Smith
Assistant Secretary

HILLMAN COAL & COKE COMPANY

By: Steve N. Smith

Title: VICE PRESIDENT

FMC CORPORATION

By:

B.R. van Eck
B.R. van Eck
Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 8th day of August, 1979, before me personally appeared B.R. van Eck, to me personally known, who, being duly sworn, says that he is an authorized representative of FMC Corporation, that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARIAL SEAL

Barbara J. Neal
Notary Public
My Commission Expires May 31, 1983

STATE OF Pennas)
) SS
COUNTY OF Allegheny)

On this 31st day of August, 1979, before me personally appeared Steven W. Hutchinson, to me personally known, who, being duly sworn, says that he is a Vice President of Hillb Coal & Coke Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARIAL SEAL

Joan B. Kane
Notary Public
JOAN B. KANE, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES SEPT. 27, 1982
Member, Pennsylvania Association of Notaries